

IN THE
United States Court of Appeals
for the Eleventh Circuit

DELTONA TRANSFORMER CORPORATION,

Plaintiff-Appellee,

v.

THE NOCO COMPANY,

Defendant-Appellant.

On Appeal from the U.S. District Court for the Middle District of Florida,
Case No. 6:19-cv-00308-CEM (Hon. Carlos E. Mendoza)

**REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE BRIEF OF 31
INTELLECTUAL PROPERTY AND MEDIA LAW PROFESSORS AS
AMICI CURIAE IN SUPPORT OF APPELLANT AND REVERSAL**

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**CERTIFICATE OF INTERESTED PERSONS AND CORPORATE
DISCLOSURE STATEMENT**

Amici Intellectual Property and Media Law Professors, by and through undersigned counsel, and pursuant to Federal Rule of Appellate Procedure Rule 26.1 and Eleventh Circuit Rule 26.1-1(a)(3), hereby notify the Court that the Certificate of Interested Persons filed by Appellant The NOCO Company (Dkt.6) is correct and complete, with the following additions:

1. Carrier, Michael A. (Professor, Rutgers Law School): *Amicus Curiae*
2. Catanzaro, Zachary (Professor, St. Thomas University, Benjamin L. Crump College of Law): *Amicus Curiae*
3. Diamond, Shari Seidman (Professor, Northwestern University Pritzker School of Law): *Amicus Curiae*
4. Dobbs, Ashley R. (Professor, University of Richmond School of Law):
Amicus Curiae
5. Dogan, Stacey (Professor, Boston University School of Law): *Amicus Curiae*
6. Farley, Christine Haight (Professor, American University Washington College of Law): *Amicus Curiae*
7. Gebhard-Koenigstein, August (Certified Law Student, Stanford Law School Juelsgaard Intellectual Property and Innovation Clinic)

8. Ghosh, Shubha (Professor, Syracuse University College of Law): *Amicus Curiae*
9. Gibson, James (Professor, University of Richmond School of Law): *Amicus Curiae*
10. Goldman, Eric (Professor, Santa Clara University School of Law): *Amicus Curiae*
11. Heymann, Laura A. (Professor, William & Mary Law School): *Amicus Curiae*
12. Hsieh, Timothy T. (Professor, Oklahoma City University School of Law):
Amicus Curiae
13. Johnson, Eric E. (Professor, University of Oklahoma College of Law):
Amicus Curiae
14. Lantagne, Stacey M. (Professor, Western New England University School of Law): *Amicus Curiae*
15. Lemley, Mark A. (Professor, Stanford Law School): *Amicus Curiae*
16. Levine, David S. (Professor, Elon University School of Law): *Amicus Curiae*
17. Li, Selina (Certified Law Student, Stanford Law School Juelsgaard Intellectual Property and Innovation Clinic)
18. Liebesman, Yvette Joy (Professor, Saint Louis University School of Law):
Amicus Curiae

19. Lobel, Orly (Professor, University of San Diego School of Law): *Amicus Curiae*
20. Love, Brian J. (Professor, Santa Clara University School of Law): *Amicus Curiae*
21. Malone, Phillip (Counsel of Record for *Amici*)
22. Mendoza, Carlos E. (U.S. District Judge)
23. McKenna, Mark P. (Professor, UCLA School of Law): *Amicus Curiae*
24. Miers, Jess (Professor, University of Akron School of Law): *Amicus Curiae*
25. Moffat, Viva R. (Professor, University of Denver Sturm College of Law):
Amicus Curiae
26. Ochoa, Tyler T. (Professor, Santa Clara University School of Law): *Amicus Curiae*
27. Perzanowski, Aaron (Professor, University of Michigan Law School):
Amicus Curiae
28. Ramsay, Lisa (Professor, University of San Diego School of Law): *Amicus Curiae*
29. Reid, Amanda (Professor, University of North Carolina at Chapel Hill):
Amicus Curiae
30. Rosenblatt, Betsy (Professor, Case Western Reserve University School of Law): *Amicus Curiae*

31. Said, Zahr K. (Professor, Santa Clara University School of Law): *Amicus Curiae*
32. Silbey, Jessica (Professor, Boston University School of Law): *Amicus Curiae*
33. Sprigman, Christopher (Professor, NYU School of Law): *Amicus Curiae*
34. Srejovic, Nina (Counsel of Record for *Amici*)
35. Stanford Law School Juelsgaard Intellectual Property and Innovation Clinic
36. Tang, Xiyin (Professor, UCLA School of Law): *Amicus Curiae*
37. Tushnet, Rebecca (Professor, Harvard Law School): *Amicus Curiae*
38. Zhou, Jina (Certified Law Student, Stanford Law School Juelsgaard Intellectual Property and Innovation Clinic)

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, *amici* state that they have no parent corporation and that no publicly held corporation holds 10 percent or more of their stock.

REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE *AMICI* BRIEF

Amici Intellectual Property and Media Law Professors submit this Reply in response to Appellant’s Response in Opposition to Motion for Leave to File Brief of 31 Intellectual Property and Media Law Professors as *Amici Curiae* (“Opp.”), Dkt.40, filed March 31, 2025. *Amici* make two brief points:

Length: First, Appellant’s Opposition claims that the *amici* brief “exceeds the page limitation set forth in Federal Rule of Appellate Procedure 29(a)(5).” It does not.

Rule 29(a)(5) provides that an *amicus* brief may be “no more than one-half the maximum length authorized by these rules for a party’s principal brief.” Federal Rule of Appellate Procedure 32(a)(7) says that a principal brief “may not exceed 30 pages . . . unless it complies with Rule 32(a)(7)(B), while Rule 32(a)(7)(B) explicitly provides that a principal brief “is acceptable if it: contains no more than 13,000 words.” *Amici*’s length limit for its brief was thus 6,500 words, one-half the 13,000 allowed for the party brief. As the certificate of compliance attached to *amici*’s brief attests, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f), it contains 4704 words, well under the 6,500 word limit.

Relevance: Second, Appellants claim that the topics addressed by the *amici* brief—whether competitive keyword advertising can constitute trademark infringement and whether initial interest confusion is a viable theory of trademark

infringement in the context of keyword advertising--“are not implicated” in this case. Opp. at 9. That too is wrong.

Appellants Opposition acknowledges that NOCO’s opening brief “do[es] argue that keyword purchases are not trademark infringement,” that it “generally addresses” whether ads placed through keyword bidding, without using the competitor’s mark in the ad text, are likely to confuse consumers,” and that it “argues generally against the application of initial interest confusion.” Opp. at 5. And the Opposition admits that the issues discussed in *amici’s* brief “relate” to “a subpart of NOCO’s own statement of the issues,” *Id.*

Appellant’s Opposition also makes no attempt to rebut – in fact, it does not even mention – the argument in *amici’s* motion for leave that the District Court’s September 29, 2023, disgorgement and preliminary injunction order, Dkt.423, expressly discusses whether keyword advertising or initial interest confusion can lead to infringement. Motion for Leave at 3-4. Indeed, *amici’s* brief is particularly relevant since, as the District Court’s order and Appellant’s Opposition discuss, this Court has not previously addressed those questions. Dkt.423 at 3-4, Opp. at 9. Nor does the Opposition adequately explain, as *amici’s* Motion details, portions of the Order where the court concludes that some keyword advertising can cause confusion and constitute trademark infringement and that “using or purchasing keywords in a

manner that would create a likelihood of consumer confusion is already prohibited by the remainder of the injunction” Dkt.423 at 23.

Those issues are raised by this appeal and the arguments in *amici*’s brief about them are relevant. *Amici* thus respectfully request that the Court grant their motion for leave to file the proposed brief.

April 1, 2025

Respectfully submitted,

By: /s/ Phillip R. Malone

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CERTIFICATE OF COMPLIANCE

This Reply complies with the type-volume limitation of Federal Rules of Appellate Procedure 27(d)(2)(C) because it contains 499 words.

This Reply complies with Eleventh Circuit Rule 27-1(a)(11) and with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

Dated: April 1, 2025

/s/Phillip R. Malone/
Phillip R. Malone
Counsel for *Amici Curiae*

CERTIFICATE OF SERVICE

I hereby certify that on April 1, 2025, I caused the foregoing Reply in Support of Motion of 31 Intellectual Property and Media Law Professors as *Amici Curiae* in Support of Appellant and Reversal to be electronically filed with the Clerk of the Court for the U.S. Court of Appeals for the Eleventh Circuit using CM/ECF, which will automatically send email notification of such filing to all counsel of record.

Dated: April 1, 2025

/s/Phillip R. Malone/
Phillip R. Malone
Counsel for *Amici Curiae*

APPENDIX

Amici curiae law professors are listed below. Affiliation is provided for identification purposes only, and the brief does not reflect the views of the listed institutions.

Professor Michael A. Carrier

Rutgers Law School

Professor Zachary Catanzaro

St. Thomas University, Benjamin L. Crump College of Law

Professor Shari Seidman Diamond

Northwestern University Pritzker School of Law

Professor Ashley R. Dobbs

University of Richmond School of Law

Professor Stacey Dogan

Boston University School of Law

Professor Shubha Ghosh

Syracuse University College of Law

Professor James Gibson

University of Richmond School of Law

Professor Eric Goldman

Santa Clara University School of Law

Professor Christine Haight Farley

American University Washington College of Law

Professor Laura A. Heymann

William & Mary Law School

Professor Timothy T. Hsieh
Oklahoma City University School of Law

Professor Eric E. Johnson
University of Oklahoma College of Law

Professor Stacey M. Lantagne
Western New England University School of Law

Professor Mark A. Lemley
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Professor David S. Levine
Elon University School of Law

Professor Yvette Joy Liebesman
Saint Louis University School of Law

Professor Orly Lobel
University of San Diego School of Law

Professor Brian J. Love
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Professor Mark P. McKenna
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Professor Jess Miers
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Professor Viva R. Moffat
University of Denver Sturm College of Law

Professor Tyler T. Ochoa
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Professor Aaron Perzanowski
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Professor Lisa Ramsay

University of San Diego School of Law

Professor Amanda Reid

University of North Carolina at Chapel Hill

Professor Betsy Rosenblatt

Case Western Reserve University School of Law

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Professor Jessica Silbey

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